

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES DOUGLAS SMITH,)	
)	
Plaintiff,)	
)	No: 3:08-0766
v.)	Judge Echols/Bryant
)	
STATE OF TENNESSEE, et al.,)	
)	
Defendants.)	

TO: The Honorable Robert L. Echols

REPORT AND RECOMMENDATION

This case has been referred to the undersigned Magistrate Judge for report and recommendation on dispositive matters (Docket Entry No. 8).

Currently pending before the Court is the defendants' motion to dismiss (Docket Entry No. 9). Plaintiff has filed no response in opposition to this motion.

According to the record, the order referring this case to the undersigned Magistrate Judge for case management, mailed to the plaintiff at the address of 2775 Big John Drive, Deland, Florida 32724-4000, was returned to the Clerk by the post office marked "return to sender, not deliverable as addressed, unable to forward." (Docket Entry No. 11). The record further reflects that on September 4, 2008, the Clerk verified a new mailing address through a telephone conversation with the plaintiff. The new address is 1134 Culpepper Circle, Franklin, Tennessee 37064. The docket entry further states that plaintiff will mail in a change of address notice to the Court (Docket Entry No. 11). The record further indicates that on September 9, 2008, defendants remailed

the service copy of their motion to dismiss and supporting memorandum to the plaintiff at this new Franklin, Tennessee, address after a service copy of these filings, mailed to the plaintiff at the above Deland, Florida, address, was returned by the post office (Docket Entry No. 12).

After plaintiff failed to respond to defendants' motion to dismiss, the undersigned Magistrate Judge on September 30, 2008, issued an order granting plaintiff an extension to and including October 13, 2008, within which to file his response to defendants' motion to dismiss (Docket Entry No. 13). On October 10, 2008, the service copy of this order, mailed to plaintiff at the address of 1134 Culpepper Circle, Franklin, Tennessee 37064, was returned by the post office marked "not at this address, return to sender attempted-not known, unable to forward." (Docket Entry No. 14).

From the foregoing facts, the undersigned Magistrate Judge finds that plaintiff has failed to keep the Clerk's office and defendants apprised of his current mailing address, has failed to respond to defendants' motion to dismiss despite an extension of time within which to do so, and has generally failed to prosecute his case.

RECOMMENDATION

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that plaintiff's complaint be **DISMISSED** without prejudice for failure to prosecute.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from service of this Report and Recommendation in which to file any written objections to this

Recommendation, with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

ENTERED this 16th day of October 2008.

s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge